

THE INDONESIAN ISLAM: LAW AND THE IDEOLOGICAL PERSPECTIVE

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Abstrak: *Islam Indonesia: Perspektif Ideologis dan Hukum.* Artikel ini bertujuan untuk mengungkap perkembangan Islam di Indonesia dengan titik berat pada aspek ideologis dan pengaruhnya pada hukum Islam. Seperti dimaklumi, sejak awal abad ke-dua puluh, ada dua bentuk ideologi yang hidup di kalangan umat Islam Indonesia; Ideologi pertama percaya bahwa konsistensi dengan tradisi sangatlah penting sementara ideologi yang lain percaya bahwa ajaran Islam dapat berubah sesuai dengan tempat dan waktu. Meski berbeda orientasi, kedua ideologi tersebut sebenarnya sama-sama memiliki kepedulian terhadap dunia politik. Di dunia politik, kedua ideologi itu, dengan karakternya masing-masing, kemudian berhadapan dengan ideologi nasionalis sekuler. Kompetisi itu yang kemudian berujung kepada kegagalan dan membuat perkembangan umat Islam di Indonesia surut ke belakang. Setelah gagal dalam bidang politik, kedua ideologi tersebut mengubah orientasi mereka menjadi Islam kultural. Melalui orientasi ini, sikap saling memahami mulai terbangun antara antara umat Islam dan pemerintah. Bahkan, pada tahapan berikutnya, pemerintah, khususnya rezim Orde Baru, mengidentifikasikan dirinya dengan kegiatan keagamaan dan memberikan kesempatan untuk mempromosikan nilai-nilai Islam. Lewat hubungan yang demikian itulah hukum Islam di Indonesia secara berangsur-angsur berkembang.

Kata Kunci: Islam Indonesia, hukum, ideologi

Abstract: *The Indonesian Islam: Law and the Ideological Perspective.* This article is aimed at exploring the development of Islam in Indonesia with particular references to the ideological perspective and its impact on Islamic law. At the beginning of the twentieth century, there were two ideologies in Indonesian Muslims. The first ideology believes that the consistence with traditions is very important while the other believes that Islamic teachings are able to change according to time and place. Although having difference in orientation, both ideologies devoted themselves to social, religious and political activities. In political sphere, however, both ideologies, were faced with secular nationalist ideology. Such a competition ended with a failure that made Indonesian Muslims receding into the background. After realizing of the failure in politics, both ideologies turn their orientation to cultural Islam. Through this orientation, peaceful and mutual understanding between Muslims and state began to grow. Subsequently, the government, especially New Order regime, identified itself with the religious activities and opened a chance to promote Islamic values. It was from such a relationship that the Islamic law gradually developed in Indonesia.

Keywords: the Indonesian Islam, law, ideology

Introduction

The development of Indonesian Islam is a very interesting religious phenomenon in Indonesian history. Islam in Indonesia grew from historical fact, the penetration of Islam in Indonesia was peacefully integrated

with the native people, and until the nineteenth century Islam was the dominant religion.¹ But, at the same time, there were

¹ Fachry Ali, Bahtiar Effendy, *Merambah Jalan Baru Islam*, (Bandung: Mizan, 1986), p. 39.

no organized Muslim activities until the appearance of some Muslims, who brought some certain ideological orientations.² By the twentieth century the position of those some Indonesian Muslims was becoming gradually strong, and started to advocate the idea of Islamizing life. In holding such idea, a great responsibility was reflected in the Muslims' struggle in adopting Islamic values with the Indonesian way of life, in particular with that of Muslims. In doing so, different ideologies arose among Indonesian Muslims in the social and political areas. This intention is hoped giving understanding that although as a dominant religion, Islam in Indonesia is not "finish[ed]" as a historical product, and is still evolving.³

The Ideological Orientation: Socio-Religious Activities

At the beginning of the twentieth century, there were two ideologies in Indonesian Muslims. The first ideology is the belief of the consistence with traditions is very important.⁴ The Muslims who hold this ideology believe in the eternal truth of the teachings of the great scholars of classical Islam.⁵ They depend strongly on ulamâ's thought from the seventh to the thirteenth century.⁶ The other ideology believes that Islamic teachings are able to change according to time and place. This division of ideological perspective then colored the social and political atmosphere of Indonesian Muslims before and even after the Independence of Indonesia.⁷

Since the existence of two ideological distinctions is concerned, a long debate among Indonesian Muslims has started. The debate centers on the question of the individual use of reasoning in the interpretation of al-Qur'ân. The second ideology frequently refers to the authority of nineteenth century reformers such as Jamal al-Din al-Afghani and Muhammad 'Abduh. Meanwhile the first ideology holds to classical ulamâ', such as al-Baghawi, and argues that a Muslim who does not thoroughly know Arabic, the Qur'an, the Sunnah of the prophet, the writings of the scientists and the *Qiyas* is not equipped to make his own interpretations of Islamic law. If one is not a scholar, the guidance and authority of the religious teachers, ulamâ', are indispensable.⁸ Difference also arises because of distinct interpretations of Islamic rituals. These differences occur in the various interpretations of *fiqh*. But most ritual disputes do not involve the basic faith.

Although they adifferent in orientation, both ideologies devoted themselves to social and political activities.⁹ This attention was intended to transform the Indonesian Muslims' faith from quantity as the dominant religion to the quality level.¹⁰ Their socio-religious activities occurred, in the first half of the twentieth century, on a regional or national scope generally in two regions: Minangkabau (West Sumatra) and Java Island.¹¹ The main achievement of their socio-religious activities was the Islamic reform in the education, that was the introduction of the modern school system to Islamic education, and a deeper understanding of Islamic teachings as well.¹²

² C. A. O. Van Nieuwenhuijze, *Aspects of Islam in Post-Colonial Indonesia*, (Bandung: W. Van Hoeve Ltd., 1958), p. 35.

³ Ahmad Syafii Maarif, "Islam in Indonesia: Cultural Opportunity," *Mizan* No. 1, Vol. 1 (1984), p. 6.

⁴ Fachry Ali, Bahtiar Effendy, *Menambah Jalan*, p. 48.

⁵ Allan Samson, "Conception of Politics, Power, and Ideology, in Contemporary Indonesian Islam," In *Political Power and Communications in Indonesia*, Eds. Karl D. Jackson and Lucian W. Pye, 196-226, (Berkeley: University of California Press, 1978), p. 199.

⁶ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, (Jakarta: LP3ES, 1987), p. 57.

⁷ Abdul Aziz and others, *Gerakan Islam Kontemporer di Indonesia*, (Jakarta: Pustaka Firdaus, 1989), p. 7; Rosihan Anwar,

"Islam and Politics in Indonesia," in *Man, State, and Society in Contemporary Southeast Asia*, ed. Robert O. Tilman, (New York: Praeger Publishers, 1969), p. 118.

⁸ Rosihan Anwar, "Islam and Politics", p. 119.

⁹ Abdul Aziz and others, *Gerakan Islam Kontemporer*, p. 3-4.

¹⁰ Ahmad Syafi'i Maarif, "Islam in Indonesia", p. 6.

¹¹ James L. Peacock, *Gerakan Muhammadiyah Memburnikan Ajaran Islam di Indonesia*, (Jakarta: Cipta Kreatif, 1986), p. 26.

¹² Clifford Geertz, "Modernization in a Muslim Society: The Indonesian Case," in *Man, State, and Society in Contemporary Southeast Asia*, ed. Robert O. Tilman, (New York: Praeger Publisher, 1969), p. 206.

The Islamic reform first introduced by the ulamâ' Ahmad Khatib from Minangkabau. He was one of the greatest teachers of the shafi'i madhhab in al-Masjid al- Haram. He taught some Indonesian Muslims during their pilgrimage, and later, they too became great teachers and reformists in Indonesia. While he was teaching his students, he did not forbid them to read and study 'Abduh's writings, like *al-Urwat al-Wuthqa* and *Tafsir al-Manar*.¹³ Some of his students to become reformists in Minangkabau are Shaikh Muhammad Taher Jalalaluddin, Shaikh Muhammad Djamil Djambek, Haji Abdul Karim Amrullah and Haji Abdullah Ahmad. Moreover, in Java, they are Kiyai Haji Ahmad Dahlan, the founder of Muhammadiyah, and Kiyai Haji Hasjim Asjari, the founder of Nahdhatul Ulama' (Revival/Awakening of Religious Scholars).¹⁴ Ahmad khatib also wrote on the subject of inheritance according to Islamic law, as an attack on the traditional law of succession (*adat*) in Minangkabau.¹⁵

In Minangkabau, many Islamic schools with modern system and with deeper understanding of Islamic teachings appeared. The Adabiyah School, for example, even though it was similar to the HIS (Holland's Inlandse School), yet the Islamic subjects were obligatory.¹⁶ The Thawalib school was more influential in west Sumatra. Haji Abdullah Ahmad and Haji Rasul taught there after their return from Mecca in 1904. The school developed further by giving the subjects not only concerning al-Qur'ân, Hadith and *Tafsir* but also Arabic and its branches such as *Nahwu*. The study of Arabic was intended to facilitate the study of the madhahib.¹⁷ These two examples of the schools in Minangkabau (West Sumatra) were an indication that Muslims in this area tried to make Islamic

education compete with the colonial school system, and at the same time they tried to improve the quality of belief of Indonesian Muslims.¹⁸

The socio-religious activities (education) of both ideologies in Java were also very great. For example, firstly, the existence of al-Jami'iyat al-Khairiyah, which was usually called Jamiat Khair. It was founded in Jakarta on July 17, 1905, and its major participation was in the field of education. The Importance of Jamiat Khair lies in the fact that it was the first representative of modern education introduced in Indonesia.¹⁹ Secondly, the existence of al-Irsyad as other educational institution. It was founded by Soorkatti who was one of the most important man in spreading reformist ideas in Indonesia. His concern for reform proved influential, and his effort to improve the quality of the Indonesian Muslim was clear. He was involved in formulating the Majelis Islam Ala Indonesia (MIAI)²⁰, and established many al-Irsyad branches in different regions of Indonesia.²¹ The other important Islamic social organization in Java, until the present, is the Muhammadiyah. It was founded on November 18, 1912 in Yogyakarta. In 1921 the Muhammadiyah had expanded its branches in all Indonesian regions, and its activities in the field of reform proved to be significant until the present day.²² The Muhammadiyah becomes a strong national movement,²³ now has more than 12.000 schools, from madrasah and kindergartens to the university level. It also has mosques, hospitals, clinics, orphanages and other institutions.²⁴

The other representative of the Indonesian Muslim socio-religious activities in Java is the

¹³ Deliar Noer, *Gerakan Moderen Islam di Indonesia 1900-1942*, (Jakarta: LP3ES, 1985), p. 39.

¹⁴ Deliar Noer, *Gerakan Moderen Islam*, p. 39.

¹⁵ Karel Steenbrink, *Dutch Colonialism and Indonesian Islam*, (Amsterdam: Atlanta, GA, 1993), p. 135.

¹⁶ Deliar Noer, *Gerakan Moderen Islam*, p. 51.

¹⁷ Deliar Noer, *Gerakan Moderen Islam*, p. 51.

¹⁸ Fachry Ali, Bahtiar Effendy, *Merambah Jalan*, p. 70.

¹⁹ Fachry Ali, Bahtiar Effendy, *Merambah Jalan*, p. 71.

²⁰ Fachry Ali, Bahtiar Effendy, *Merambah Jalan*, p. 71.

²¹ Deliar Noer, *Gerakan Moderen Islam*, p. 75.

²² Deliar Noer, *Gerakan Moderen Islam*, p. 88.

²³ James L. Peacock, *Gerakan Muhammadiyah*, p. 26.

²⁴ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 63.

Persatuan Islam (Islamic Union). It is usually called Persis, and was founded in 1920 in Bandung by a Muslim group interested in the study of Islamic teachings.²⁵ Apart from its educational activity, the publication of many journals, such as *Pembela Islam* (Defense of Islam), was other its important activity, and through which Persis leaders strove for the spread of true Islamic teachings.²⁶ The final representative is Nahdhatul Ulama (NU). It was established on January 31, 1926 by Hasjim Asjari. It is one of the largest independent Islamic organizations in the world. Although it is hard to account, NU has approximately 30 million members. The establishment of NU is intended to spread Islamic teaching. It conducted educational activities through its network of around 6,830 Islamic boarding schools, or *pesantren*, and of 44 universities which are involved in religious and general studies. Beside undertaking educational activities, it also, among other things, funds hospitals, and organizes communities into more coherent groups in order to help combat poverty.²⁷

Socio-Political Activities: Islam and Secular Nationalist

Both ideologies, along with socio-religious activities, also undertook socio-political activities. Both first entered upon by the Sarekat Islam (1911-1942). The development of this political party was intended to fulfill the political needs of Indonesian Muslims, and to assume a dominant position for Muslims in the political field at that time.²⁸ Thus, it gradually turned into a political organization from a mainly commercial organization. Hence, its first name was Sarekat Dagang Islam, and was founded by Haji Samanhudi on October 16, 1905 in Solo in the central Java. However, its

name was changed into Sarekat Islam and was legalized by the Dutch colonial government on September 10, 1912 in Solo. This organization held Islam as one of its basic foundations.²⁹ One reason, Islam was its basic foundation was that the Dutch colonial powers always tried to destroy Islam because they held it to be their greatest enemy in controlling Indonesia.³⁰ Therefore, this organization was one of the largest all-Indonesian Muslim political parties before independence,³¹ and its strong position did not stem from its leadership but from its united mass following.³²

Sarekat Islam's purpose was to make Indonesia independent. Its membership included rural and urban people, and they stood against colonialism and imperialism. For a short period Sarekat Islam was successful in guarding Muslims under the banner of Islam, and became the national mass movement.³³ But after 1917, the leaders of this party split over the issue of socialism and Islam. This happened specifically after the Russian revolution of October 1917. As the result, internal conflict arose, and some of its members left believing that the party was not equipped against imperialism. They withdraw from Sarekat Islam to form other political party, the Sarekat Islam Merah which became the Indonesian Communist Party (PKI) in 1921.³⁴

At the same time the feeling of nationalism grew. Indonesian nationalism first appeared as a result of the growing awareness of Muslim Indonesians in the social, political and intellectual fields.³⁵ On the other hand,

²⁹ M. A. Gani, *Cita Dasar & Pola Perjuangan Svarikat Islam*, (Jakarta: Bulan Bintang, 1984), p. 14.

³⁰ M. A. Gani, *Cita Dasar & Pola Perjuangan Svarikat Islam*, p. 15.

³¹ C. A. O. Van Nieuwenhuijze, *Aspects of Islam*, p. 45.

³² Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 82.

³³ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 82.

³⁴ Rosihan Anwar, "Islam and Politics," p. 117.

³⁵ H. Alamsjah Ratu Perwiranegara, *Islam dan Pembangunan Politik di Indonesia*, (Jakarta: CV. Haji Masagung, 1987), p. 150.

²⁵ Deliar Noer, *Gerakan Moderen Islam*, p. 101.

²⁶ Deliar Noer, *Gerakan Moderen Islam*, p. 103.

²⁷ *En.wikipedia.org/wiki/Nahdlatul_Ulama*, downloaded on November 15, 2014.

²⁸ Deliar Noer, *Gerakan Moderen Islam*, p. 114.

secular nationalism also appeared as the result of the combination of Islam and Marxism. Therefore, the Problem of ideology among Muslims became more conflicting. Firstly, Muslims had to fix their internal difference to be able to compete with the nationalists, secularists or any others. In order to minimize the ideological difference among Indonesian Muslims, MIAI (Majlis Islam A'la Indonesia) was established on September 21, 1942 in Surabaya, as a potential forum for uniting Muslims. Secondly, at the same time, it was a place to compete with secular nationalists whom the Japanese tended to support to by the end of the Japanese era in Indonesia.³⁶ This phenomena lead to an unfair condition; when the investigating Body for the Efforts for the Preparation of the Independence of Indonesia (BPUUPKI) was held, the Muslim representatives were thinly represented.³⁷ Nonetheless, the issue between Islam and secular nationalism was severely discussed in that committee.³⁸

Hence, both Muslim ideologies had to face the national secular ideology. This face to face is due to, according to Deliar Noer, the educational system, which was divided between secular and religious schools. Muslim scholars tried to overcome the secularization process by demanding the introduction of religious as well as secular subjects in both schools. But, this education gradually produced the dual character of leaders, that are secularly and the religiously oriented leaders. The development of these two orientations later on produced the political groupings, such as Indonesian National Party (PNI) belonged to secular nationalists.³⁹ The face to face in politics, was called by certain scholars, a conflict between the santri and the abangan

(nominal Muslims).⁴⁰ The santris generally maintain that abangans will end up in hell, while the position of abangans, especially in the political arena, is very important in reshaping Indonesian Muslims.⁴¹ Therefore, in the political atmosphere the abangans were always suspicious of the santris, who believed that politic was not merely in the administrative matters but also had a connection with the spiritual, cultural and religious life of the nation.⁴²

The Jakarta Charter was a proof that such conflict existed. The Jakarta Charter was the major result of the Indonesians' agreement including the greater number of Muslims involved. As matter of social-politics, this agreement would purpose to make the foundation of state. From the rank of sequence of its formulation, of course before the final formulation, it was written in it seven words indicating that "Sharia" should be implemented amongst the Muslim community. When it was discussed in the final stage, however, non-Muslim community, to some extent supported by secular nationalists, objected to the seven written words, and therefore they were abolished preserving the transcendence of the unity. As because of the Jakarta Charter ratified on August 18, 1945, as the preamble of constitution, the seven written words not incorporated completely. Thus, Indonesia neither became the Islamic, nor the secular state but it was Pancasila state.

The face to face in ideology encouraged the formation of new Islamic political organization, named Masyumi party. It which was founded on November, 7/8, 1945 in Jogjakarta and was a broad political party that encompassed all shades of opinion within the Indonesian Muslims. The establishment

³⁶ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 96.

³⁷ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 104.

³⁸ Ahmad Syafii Maarif, "Islam and Nationalism in Indonesia," *Mizan* No. 4 Vol. I (1984), p. 14.

³⁹ Deliar Nioer, "Islam as a Political Force in Indonesia," *Mizan* No. 4 Vol.1 (1984), p. 34.

⁴⁰ K. E. Ward, *The Foundation of the Partai Muslimin Indonesia*, (Ithaca: Modern Indonesia Project Southeast Asia Program Cornell University, 1970), p. 2.

⁴¹ K. E. Ward, *The Foundation of the Partai Muslimin Indonesia*, p. 2.

⁴² K. E. Ward, *The Foundation of the Partai Muslimin Indonesia*, p. 6.

of this party was intended to be a forum for the implementation of Islamic teachings and Islamic law in the Indonesian state.⁴³ Unfortunately, the Masjumi did not maintain their initial unity and strength. The first schism took place in 1947, when PSSI [the Indonesian Islamic Association Party] reconstituted itself, partly an opportunistic maneuver by some Islamic leaders to gain seats in the Sjarifuddin cabinet. The second schism came in 1952, when the NU became an overt political party and left the Masjumi. This split was contrast to the agreement ratified in Jogjakarta on 7/8th November in 1945 which issued that the Masyumi as a single of Islamic party for reaching the independence.

The internal conflict in the Islamic struggle was the difference of the fundamental purpose among the Islamic political force. Before the general election of 1955, there were four majors of Islamic parties; Masyumi, NU, Perti and PSII. Even though the appearance of these parties as the power of Muslim community in the political force, each party displayed its own rule that resulted in the disintegration of the Islamic struggle. As a result of such internal conflict was that in general election in 1955 Islamic parties were defeated as can be seen from the proportion of the seats in the Constituent Assembly.⁴⁴

A new situation arose in 1958, with the establishment of Sukarno's Guided Democracy. The Masjumi resisted Sukarno's authoritarian rule and was banned in August, 1960, and that made the political atmosphere became heated again. On the other hand, the position of PKI (the Communist party) increased stronger then before and even gained Sukarno's protection. By this, the feeling of involving into the political force

among Muslim community was encouraged again, though their power gradually became weaker. Evidently, ABRI (the Indonesian armed force) and Muslims cooperated each other in the struggle to rout the remnants of the PKI and eliminate Sukarno's power, and finally they could abort the PKI coup in September 30, 1965.

Henceforth, the Muslim community attained the victory and came out on the top. The factors involving the capability of defeating PKI was not merely because they were the majority, but also this event was considered as religious duties "Jihad" against the enemy of the Muslims. The abortive of PKI, however, was claimed by the Muslim community as their victory. Therefore, they wanted Masyumi to be re-acknowledged as Islamic political party, but this desire was encountered by ABRI. The position of ABRI on the other hand, was very strict and strain to oppose whom deviated from Pancasila.⁴⁵ Muslims once again receded into the background.

The Change of Ideological Orientation: Cultural Islam

The New Order became the political elite, and was the result of Muslim struggle against PKI.⁴⁶ At the beginning of the New Order, the government, which was mostly dominated by the military, was hostile to Islam at the beginning. Pressure and intimidation to the Muslims continued to be encouraged, wearing headscarves in school was prohibited, Ramadan holiday was eliminated, khutbah manuscripts were continually censored. Permission of Islamic activities was complicated, and not infrequently a preachers who were asked to come down from the pulpit preaching by force by the authorities because they undermined the authority of the government.

⁴³ Ahmad Syafi'i Maarif, *Islam dan Masalah Kenegaraan*, p. 110.

⁴⁴ M. Rusli Karim, *Nuansa Gerak Politik Era 1980-an di Indonesia*, (Jogjakarta: PT. Media Widya Mandala 1992), p. 16-17. B. J. Boland, *The Struggle of Islam in Modern Indonesia*, (Haque: Martinus Nijhoff 1982).

⁴⁵ Rosihan Anwar, "Islam and Politics," p. 118.

⁴⁶ M. Rusli Karim, *Islam dan Konflik Politik Era Orde Baru*, (Jogjakarta: PT. Media Widya Mandala, 1992), p. 2.

The majority of New Order ruling group, including Suharto himself, were nominal Muslims rather than santri Muslims. In the 1960s, the ruling group refused the influence of Muslim parties. In 1970s, there were nine parties, the ruling group consolidated all the political parties into two parties: PPP (the Development Unity Party) was based on Islam, provided place for Muslim interests, and PDI (the Indonesian Democratic Party) based on national democracy. Beside consolidating, they also formed a political power, named Golkar, as an arm of the armed forces and the government as a single majority of political organization in the New Order era. PPP was based on Islam, provided place for Muslim interests, and PDI based on national democracy.

PPP and PDI were under the control of the government, and until PPP was not deeply rooted among society because all the religious matters after that were handled by the government.⁴⁷ The Muslim community suspected that Ali Murtopo was behind all these events. He was involved in the formation of Golkar and in the restriction of Muslims and other political parties. In 1973, the People's Consultative Assembly (MPR) proposed to make mystical belief acquire a similar position to religion. During the same legislative session, the assembly unified the law on marriage and divorce by limiting the jurisdiction of Islamic courts. But these two decisions, were eventually defeated by Muslim forces. In 1983, PPP was forced, as well as other parties, to recognize Pancasila as the source of every social and political organization. Thus, Golkar was able to strengthen its ability, as a starting point, so as to reach its peak.⁴⁸ This kind of restriction in politics laid by New Order invites many interpretations from scholars such as W.F. Wertheim who argues that the

suitable pattern for Indonesian political life is through the natural phenomena of the "patron-client", i.e. the relationship between patron and client constituting an endless of relationship.⁴⁹

After realizing of the failure in politics to some extent, Muslims community started to improve the communal activities. The activities based on an idea that the Muslim community should not merely focus their attention on the political force, but also should focus on education, religious instruction, leadership training and writings. Those were intended to be reinforcing of within Muslim community itself. According to most Indonesian Muslim scholars, including Ahmad Syafi'i Maarif, however, though Muslims have failed in politics but there is still the opportunity to develop the "socio-cultural conscience and activities." The cultural opportunity should continue to appreciate the principles of democracy in socio-politics. This notion becomes a "culturally Islamic ideology". For a peaceful implementation of that ideology mutual understanding between Islam and nationalism should be promoted.⁵⁰

The idea above, according to Hefner⁵¹, has been laid down in the late 1960s. There were several intellectuals who had a great strategy that thought "political Islam" was restricted by the government, it should not be "equated with government opposition to 'cultural' or 'civil Islam'". It meant that Islam could serve as a source of ethical and cultural guidance. Therefore, the relationship between the government and Muslims should be kept. This view was advocated by a number of young Muslim intellectuals, and they were independent. According to Muslim intellectuals, in this case represented

⁴⁷ M. Rusli Karim, *Islam dan Konflik Politik Era Orde Baru*, p. 4.

⁴⁸ M. Rusli Karim, *Nuansa Gerak Politik Era 1980-an*, p. 16-17.

⁴⁹ Kuntowijoyo, "Religion, State and Social Formation in Indonesia," *Mizan* No. 3 Vol. I (1984), p. 15.

⁵⁰ Ahmad Syafi'i Maarif, "Islam in Indonesia," p. 7.

⁵¹ Robert W. Hefner, "Islam, State and Civil Society: ICMI and the Struggle for the Indonesia Middle Class," *Indonesia*. 56 (October, 1993): p. 1-36.

by Nurcholish Madjid, the Muslim parties were unable to show their capacity, and consequently, the Muslim community could not develop a new organization, that is "capable of winning the moral sympathies of all Indonesian Muslims." According to Madjid, the majority of Muslim politicians "sacralized" their institution based on the Islamic state. He offers as a solutions that "secularization" is preserving Islamic values among the Muslim community (not the same with secularization in the western values). Madjid, however, was challenged by other old intellectuals, such as H. M. Rasyidi, Hamka and Muhammad Natsir. But Madjid, along with other intellectuals, developed the new strategy as a renewal of Islam, especially in education and social welfare.

The new strategy has been making campuses became a place for Muslim students to hold Islamic activities. In the 1970s, the rapid growth of Muslim initiatives in university campuses were able to Islamize the secular universities with different Islamic activities. Those activities in turn improved among the Middle class, the "Salman movement" is a good example of this phenomena. In 1986, Madjid founded an association for urban and middle class people who do not have a sufficient background for understanding Islam. The result is that mosques and prayer hall in hotels, government departments or offices have grown. Also, during the 1980's many Muslims entered the government bureaucracy from the center to the regions, and also strengthened the power of the New Order in the accumulation frame of Islamic civil and military, and promoted Muslim interests. As a result, most Muslims enjoyed to recognize the reality of the New Order and to undertake initiatives that could enhance their influence within its institution. This development of socio-cultural conscience and activities (cultural Islam) indicated that there has been significant revitalization of

Islam in Indonesia particularly among young people.⁵²

The government, on the other hand, supported cultural Islamic programs. The government identified with the religious activities and gave a chance to the promotion of Islamic values. Thus, in 1974 the government reexamined the decision of Consultative Assembly of the mystical belief. Furthermore, the Department of Religious Affairs, with its decision No. 70, 1978, banned missionary members of any religion among citizens who already professed a faith. To strengthen this decision, the Department of Religious Affairs joined with the Home Affairs in 1979. The department of Religious Affairs also expanded the institutions of Islamic education and da'wah throughout Indonesia, such as IAIN. This institution which begun in the 1960s and during the 1970s and 1980s produced large numbers of graduates trained in different fields. Moreover, the program on the infrastructural development was also supported by the government. The government constructed mosques, prayer halls and Islamic schools, especially in areas regarded as weakly committed to Islam. There was a program supported by Suharto himself called "Amal Bakti Pancasila." This program has constructed around 400 mosques, and has helped around 1,000 Muslim proselytizers.

The process of cultural Islam was not touched in the political area. In 1985, the government forced all social and political organizations to accept the Pancasila, as the basics for each organization. According to Hafner⁵³, as the result of accepting Pancasila, the process of cultural Islam or civil Islam was able to go on because Muslims were not involved in a single party, rather they were spread in all parties, and were committed to Islam just the same. Therefore, Islam can be

⁵² Howard M. Fiderspiel, *Muslim Intellectuals and National Development in Indonesia*, (New York: Nova Publishers, Inc., 1991), p. 185.

⁵³ Robert W. Hefner, "Islam, State and Civil Society".

promoted to all parties. Furthermore, more nominal Muslims change their belief to santri faith. The foundation of ICMI December 6-8, 1990 is a clear evidence of the process of cultural Islam among the middle and elite classes. ICMI, under chairman Habibie, is intended to unify Muslim intellectuals under a single association.

The foundation of ICMI, according to Hafner, seems duplicate of Persami (Persatuan Sarjana Muslim Indonesia), founded in 1964. This organization was supposed to combat the intellectuals, who were influenced by the Communist party. The Persami, at that time, was active and played a major role in supporting the New order in 1967. However, in 1968, this organization declined, due to internal disputes and the disinterest of the government. Whatever it is, the existence of ICMI, according to Hafner, allowed for Muslim activities not to be regarded as hostile, and not the subject of political control by the government. The evidence can be seen, a month after the first congress of ICMI, the media gave interesting attention to Islamic activities, such as religious discussions. Whatever the assumption of the founding of ICMI, in the eyes of certain Muslim intellectuals may be, ICMI provides Muslims a historical opportunity, in terms of resources and political incorporation to undertake the initiative of further development of Islam, such as the establishment of Islamic bank. It also provides an additional chance for institutional consolidation of the new Muslim middle class. So, ICMI remains as important way for advancing Muslim social interests in government and society.

Cultural Islam: Its Impact on Islamic Law

When the Dutch arrived in the Netherlands East Indies (Indonesia) in 1596, there were several Islamic kingdoms, whether in Sumatra or in Java. In eastern Indonesia, there were Goa which is located in South Sulawesi

(Celebes) and Ternate.⁵⁴ As a general characteristic of Islamic law, Nicholson put his theory according to the application of Islamic law particularly in Java and Sumatra. For him the Islamic law was rather unobservable because of interaction with the *adat* (customary Law). So, he put his theory on three types of law accommodation. First, both Islam and *adat* present together. Second, Islamic elements replacing *adat* elements, and the final accommodation is the modification of them.⁵⁵

Since the Dutch changed their position from a Trading Company (VOC) to that of ruling all areas of the Netherlands East Indies (Indonesia), their policy was always more or less against Islam. This is because they observed that the majority of Indonesians are concerned with *adat* rather than with Islamic Law. Therefore in order to manage country which includes Europeans, Orientals and Native people, the Colonial Legal Administration was very pluralistic and separated the system of private law; as a result, conflict always rose.⁵⁶ According to the administrative structure, the political position of Native courts, including Islamic courts were directly governed by the Colonial Government which made the authority of local rulers limited.⁵⁷

With reference to Islamic Law in the early coming of the Dutch, it was actually applied to some extent in certain areas where Islam had a stronger influence than the other elements. This application resulted in the establishment of Islamic courts, and at the same time, the Muslim judges (*Penghulu*) were appointed by local rulers. For example the Islamic courts in Aceh, in Jambi, in

⁵⁴ Tengku, Ismail, Yakub, *Sejarah Islam di Indonesia*, (Jakarta: Widjaya, 1973), p. 32-44.

⁵⁵ Clara Kibby Nicholson, *The Introduction of Islam into Sumatra and Java: A Study in Social Change*, (Ph.D. Dissertation, Michigan University, 1982), p. 157.

⁵⁶ Clara Kibby Nicholson, *The Introduction of Islam into Sumatra and Java*, p. 249.

⁵⁷ Hooker, *A Concise Legal History of South-East Asia*, (Oxford: Clarendon Press, 1978), p. 189.

South and East Kalimantan, and South Sulawesi. Likewise, Islamic courts in Java had been in existence since the sixteenth century.⁵⁸

No matter how the local rulers and the Muslim judges did their duties through the Islamic courts according to Islamic Law, the Colonial Government determined that what is concerning the Islamic law should be under the control of the Government authority. In 1808 the Colonial Government made a letter of instruction stating that the *Penghulu* should deal with the issue of Muslim marriages and inheritance only. This regulation implies that the colonial government did not interfere with *Penghulu* authority, and the existence of Islamic courts was acknowledged as well.⁵⁹

When the British took over Java (1811-1816), Sir Stamford Raffles divided the administration of courts into two types; Islamic courts which was headed by the *Penghulu*, and dealt with Muslim marriages, divorces and inheritance. The other was district courts (civil courts or *landraad*) which were based on *adat*. In 1819 the Commissioner General ordered that the *Penghulu* should attend the civil courts as advisers only concerning the *adat* and religious law because the Colonial Government assumed that *adat* and religious law were identical.⁶⁰ In 1828, however, according to a decree of the Commissioner General in Jakarta, it was decided that the conflict of Muslim marriages should be undertaken by district courts which consisted of the *Penghulu* and the head of district courts. Furthermore, in 1835, the Colonial Government issued the regulation in which Muslim marriages and inheritance for the area of Java had to be decided by

the *Penghulu*, and the execution of this decision, to be implemented only after the approval of the district courts.⁶¹

As regard Javanese Muslims, the *Recht Reglement* of 1854 in article 82 it is stated that civil matters had to be dealt by the *Penghulu* or by *adat* leaders. But in 1882 William III who was the Dutch king made a regulation by his Royal Decree. No. 24, in which the existence of *Priesterraaden* (Islamic Courts or Priest Courts) had similar territory with district courts. Furthermore, all Islamic court decisions and their executions did not have to be active on district courts anymore. In place of the previous regulation (1835), all *Penghulus* decisions had to be reported to the regents (Heads of region) regularly.⁶²

When Snouck Hurgronje was the advisor of native affairs in the Netherlands East Indies from 1859-1936, he made a strong demand to abolish the Islamic courts. It is due to the regulation of 1882 which was published in *Staatblad* No. 152, which disturbed him because according to him the "terms of Prieshood" was never found in Islam. Moreover, this regulation will directly establish Islamic courts against the role of *adat* generally, and against the role of the aristocracy (*prinyayi*) particularly in the Java area. An example drawn by Benda who explained that the Mataram kingdom structure was influenced strongly by India toward *Ningrat* (Aristocrat)⁶³ and Hurgronje also was impressed that *adat* actually limited the role of Islam in practice. Therefore, if the regulation of 1882 was implemented conflict would arise. But, he believed that Islam for the Netherlands East Indies Muslim was not only a religion, but also a political force. Consequently, his job was to abolish Islam in order to make the

⁵⁸ Muhammad Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama: A study of Islamic Legal Thought in Indonesia*, (Ph.D. Dissertation, Michigan University, 1991), p. 65-66.

⁵⁹ Muhammad Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama*, p. 66.

⁶⁰ Ahmad Bin Mohd. Ibrahim, "The Administration of Muslim Law in Indonesia," *Islamic Culture* 43 (1969), p. 10.

⁶¹ *Fatwas of the Council of Indonesian Ulama*, p. 67-69.

⁶² *Fatwas of the Council of Indonesian Ulama*, p. 67-69.

⁶³ Harry J. Benda, "Kontinuitas dan Perubahan dalam Islam di Indonesia," in *Sejarah dan Masyarakat*, ed. Taufik Abdullah, (Jakarta: Pustaka Firdaus, 1987), p. 100.

Netherlands a mother country.⁶⁴

To reach this purpose, Hurgronje used the power of *adat* against Islam in his so called strategy “Theorie-Receptie” (reception Theory). According to Hutagalung this theory was applied in I. S. (*Indische Staats Regeling*) of 1929 mentioning that Islamic Law was not Indonesian Law. Therefore according to this theory, Islamic Law could be implemented it was needed and was not in contradiction with *adat*.⁶⁵

The realization of his desire was in Java and in Madura where superior native courts were made, with the provision of Islamic courts too which were limited to marriage, repudiation, reconciliation and divorce. The Colonial Government in a revision in 1931 preserved the Islamic court institutions, but *Penghulus* were appointed throughout those two areas where the superior native courts existed with same competence of Islamic courts. While the other areas were still governed by old enactment and customary practices, the Islamic courts in Java and in Madura were regulated by the new revision, and in the case of proper affairs and inheritance were dealt with by district courts. Finally this phenomena remained until the independence of Indonesia.⁶⁶

After independence, Islamic law always stands along with the fluctuation of Indonesian Muslims politics. In general, for more than half a century Muslims receded into the background in the politics. The Muslim majority in Indonesia had been unable to overcome its internal and external conflict and achieve political unity and power. The internal conflict was the difference of the fundamental purpose among the Islamic political force. Even though the appearance of these parties as the power of Muslim

community in the political force, each party displayed its own rule that resulted in the disintegration of the Islamic struggle. The external conflict is Muslims faced secular nationalists. The Jakarta Charter was a proof of that external conflict.

The Islamic law has light since Indonesian muslims have changed their ideology to cultural Islam. The idea is that Islam could serve as a source of ethical and cultural guidance. So the Muslim community should not merely focus their attention on the political force, but also should focus on education, religious instruction, leadership training and writings. With cultural Islam, then Muslims have not been as a threat to the state based on Pancasila.

Sympathy of the government began especially from the New Order regime. The sympathy demonstrated with a number of political policies that brought together the aspirations of Muslims. Those policies, among others, are the Marriage Law No. 1 of 1974 which was followed by Government Regulation No. 9 of 1975 on the Implementation of the Marriage Act. Further provisions on wakaf of Owned Land in Government Regulation No. 28 of 1977. All these are new trends that can be seen as a sign of reconciliation between the government and Muslims after two decades of the antagonist.

In 1989, the government also filed a Religious Judicature bill containing provisions that for those who are Muslims apply Islamic law in matters of marriage, inheritance, charity (*wakaf*), grants (*hibah*) and *sodaqoh*. Politically, bill was supported by the Indonesian armed forces faction, and by the fraction of Golkar, both initially supported the non-Muslim groups. But this bill still got a rejection of the secular nationalist groups who rated this bill, including the Marriage Bill, there had been a link with the Islamic state and the Jakarta Charter as well as. However, the concern was over after President Suharto gave the assurance that the government would not enforce the Jakarta Charter. After that,

⁶⁴ Rohani Abdurrahim, *Muslim in Indonesia and the Nation of an Islamic State*, (Selangor: Dewan Pustaka Islam, 1991), p. 3-4.

⁶⁵ Muara P. Hutagalung, *Hukum Islam dalam Era Pembangunan*, (Ind. Hill Co. 1985), p. 17-18.

⁶⁶ B. Ter Haar, *Adat Law in Indonesia*, (New York: Institute of Pacific Relations, 1948), p. 26-28.

further discussions of the draft went well, and became the Religious Courts Law No. 7 of 1989, which also placed Religious Court as a state judicial institution regulated in Basic Law on Judicial Power No. 14 of 1970.

In 1991, the compilation of Islamic Law was made with Presidential Instruction No. 1 of 1991, then in 1992 the Banking Act was made and became the Law No. 7 of 1992. To further strengthen the legal position of mu'amalah, the Banking Act has also been updated with the Law No.10 of 1998 on Banking, which further reinforced the implementation of Islamic law in the field of banking. The Bank of Indonesia also held Shariah Council. In 1999, the government also established Zakat Law No. 38 of 1999.

The existence of the compilation of Islamic law is thought to be a progressive and development for Islamic law in Indonesia. It is a renovation especially for Islamic justice. The Islamic law, in general, is taken from Qur'an, Hadits and *ijtihad* (Investigation) of Ulama. In contrast, the material of Islamic law is found more in Fiqh books written by outhoritized ulama many centuries ago. The circumstance which happens in Indonesia show that *mazhab* Syafi'i is primarily accommodated if it is compared to any other *mazhabs*. The implementation of the Islamic justice from the colonial period until the independence of Indonesia was connected to fiqh books in both process and decision of law.⁶⁷

Because of this, the government made a positive statement for the role of the Islamic justice in regulation No. 7 of 1989, which required compilation in order to renovate the Islamic law for Indonesian Muslims. The reasons for this are: (a) as has been mentioned early, the reference for Islamic law is fiqh. That means the Islamic justice is not based on law but on a certain ulama

perspective. This is absolutely against the principle of law No. 14 of 1970. (b) Those fiqh books written in Arabic are difficult to be understood by junior lawyers. (c) Those Fiqh books probably are relevant to the time when the ulama lived. But, they should be reconsidered before being adopted in Indonesia because of dissimilar requirements. (d) Each ulama based his book on his opinion, so it is considerably biased. This fact lead to the difficulty in petition.⁶⁸

So, the compilation is intended to give something concerning the law more certain to answer problems. The formation process, involving ulama and intellectual Muslims, made the compilation more sure because it is taken from various Fiqh books and Islamic legal research in social development, and then they are collected and formulated in easy Indonesian as a reference. But the compilation is not a final effort to develop and to renovate the Islamic law in Indonesia. This can be seen from the following percentages of three Compilation Books. Marriage law, inheritance law and *wakaf* law. 78% is about marriage law, 18% is about inheritance law and 4% is about *wakaf* law. The compilation is not the ultimate attempt to develop Islamic law in Indonesia in order to respond to the problems with greater certainty and surity.

Conclusion

The study on the history of Indonesian Muslims ideologies indicates that Indonesian Islam is the product of a historical process in which Indonesian Muslims always struggle to strengthen Islamic values in the life of every Indonesian Muslims, and to influence the state as well. In the social-religious fields, it seems that although having different ideology, Indonesia Muslims believes that education is

⁶⁷ Zaini Ahmad Noeh, *Peradilan Agama Islam di Indonesia*, (Jakarta: PT. Intermasa, 1990).

⁶⁸ Wasit Aulawi, *Kompilasi Hukum Islam dalam Sistem Hukum Nasional.*, Karya Ilmiah disampaikan pada Upacara Pengukuhan Guru Besar Tetap dalam Ilmu Hukum Fikih IAIN Syarif Hidayatullah, Jakarta, 1989.

very important, while in the socio-political arena, the ideological conflict is between Islam and secular nationalism. But, during the New Order, in 1970s, the process of Islamic ideology changed to cultural Islam, in which mutual understanding between Islam and nationalism was reconciled. Through the recent ideology, Islamic law apparently could develop further.

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